

**REMARKS**

Applicants thank Examiner Cintins for granting an interview to Applicants' Attorneys on January 12, 2004, and for his helpful comments.

Claims 38 and 78 have been amended to recite that the filters are essentially horizontal with respect to the plane of the plate. Support for these amendments can be found throughout the Specification and Drawings, and as pointed out by the Examiner during the telephonic interview, specific support for such an amendment can be found in Figure 4.

Claim 41 has been amended to recite that the plate includes at least three membranes having unequal angles relative to a major plane of the plate. Support for this amendment can be found throughout the Specification, Drawings, and originally filed Claims, including at page 4, lines 15-17, at page 11, line 25 to page 12, line 6, and in Figure 11.

Rejection of Claims 38, 39, 41, 43-45, 50, 53-59, 63-68, 73, 76, 78, 80, and 82 under 35 U.S.C. § 102(b)

Claims 38, 39, 41, 43-45, 50, 53-59, 63-68, 73, 76, 78, 80, and 82 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,674,395, issued to Stankowski, et al.

The Examiner stated that Stankowski, et al. teach a multi-well filtration device which utilizes an ultrafiltration membrane positioned at an angle with respect to the direction of gravitational force. The Examiner also cites Stankowski, et al. as teaching an embodiment wherein the membrane is flat and is located at the bottom of a chamber, and the Examiner believes this is all that is required by Claims 38, 39, 41, 43-45, 50, 53-59, 63-68, 73, 76, 78, 80, and 82.

As stated in the previous Amendment filed August 18, 2003, and during the telephonic interview, Applicants respectfully disagree with the Examiner's assessment of Stankowski, et al. and believe the Examiner is ignoring the plain teachings of the reference. During the telephonic interview, the Examiner stated that Stankowski, et al. do not teach membranes that are horizontal with respect to the plane of a plate, and suggested amending the claims in such a manner. Without agreeing with the Examiner and solely to advance prosecution, Applicants have amended Claims 38, 41, and 78. As suggested by the Examiner, Applicants have amended Claims 38 and 78 to recite that the filters are essentially horizontal with respect to the plane of

the plates. Applicants have also amended Claim 41 to recite a plate that includes at least three membranes and the angles of each of the three membranes are unequal to each other.

Stankowski, et al. does not teach or suggest a plate that includes at least three membranes and the angles of each of the three membranes are unequal to each other.

Claims 39, 43-45, 50, 53-59, 63-68, 73, 76, 80, and 82 are dependant from either Claim 38, 41, or 78, and therefore incorporate the limitations of one of those independent claims. In light of these arguments and amendments, Applicants' claimed invention is not anticipated by Stankowski, et al.

Rejection of Claims 40, 51, 60, 61, 69, 70, 72, 74, 75, 77, 79, and 81 under 35 U.S.C. § 103(a)

Claims 40, 51, 60, 61, 69, 70, 72, 74, 75, 77, 79, and 81 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,674,395, issued to Stankowski, et al.

The Examiner stated that Stankowski, et al. does not disclose a wedge and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a wedge to adjust the angle of orientation of the referenced membranes, since wedges are typically used to produce and maintain an object at an angle. Additionally, the Examiner stated that it would have been obvious to one of ordinary skill in the art at the time the invention was made to angle the membranes of the reference system in the manner recited in the pending Claims as Stankowski, et al. disclose a range which overlaps those recited values. Furthermore, the Examiner contends that it would have been obvious to employ the recited number of wells in the reference system in order to increase treatment capacity.

Applicants respectfully disagree and believe the Examiner has not established a *prima facie* case of obviousness. To establish a *prima facie* case, the Examiner must show some teaching or suggestion that would have motivated one skilled in the art to modify the teaching of Stankowski, et al. in the way suggested by the Examiner. M.P.E.P. § 2142. As stated in the previous Amendment filed August 18, 2003, Stankowski, et al. does not recognize or give any hint that disparate filtration rates can be experienced between two or more wells *of the same plate*. Without recognition of this problem, one of ordinary skill would not be motivated to use a wedge to decrease or eliminate the "smile effect," as suggested by the Examiner. Whether or not the referenced devices taught in Stankowski, et al. inherently prevent the "smile effect" is

irrelevant to the requirements of 35 U.S.C. § 103. It is well settled law that obviousness cannot be predicated on what is not known at the time an invention is made. M.P.E.P. § 2141.02.

Without agreeing with the Examiner and solely to advance prosecution, Applicants have amended Claims 38, 41, and 78, as described above. Claims 40, 51, 60, 61, 69, 70, 72, 74, 75, 77, and 81 are all dependent from either Claims 38, 41, or 78, and thereby incorporate the amendments.

Claim 79 recites an angling mechanism that sets the angles of the flat membranes at a respective non-zero angle relative to the plane of the plate, with the respective angles decreasing as the position of the respective wells increases relative to a line passing through the center of the plate. Stankowski, et al. does not teach or suggest plates having wells with filters that have dissimilar angles.

In light of these arguments and amendments, Applicants' claimed invention is not obvious in light of Stankowski, et al.

### CONCLUSION

Claims 38, 41, and 78 have been amended. In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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